

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Single-Use Bag Reduction Ordinance

Meeting Date: September 17, 2012
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: [Agenda Item Number]
Staff Contact: Ethan Nelson
Contact Telephone Number: (541) 682-5224

ISSUE STATEMENT

This public hearing is a continuation of the February 27, 2012 and July 23, 2012 Council discussions on reducing single use plastic bags from Eugene retail establishments.

BACKGROUND

At the July 23, 2012 Council work session City Council made a motion to advance the model Single-Use Bag Reduction Ordinance to public hearing on September 17, 2012. In particular, this ordinance includes city mandated five-cent fee for single-use paper bags.

To provide an opportunity for public input on the proposed ban, city staff created a project webpage: www.eugene-or.gov/plasticbags. Links to a consumer and retail survey were provided as well as the original Agenda Item Summary (AIS), a staff report, the proposed and revised ordinances, and links to plastic bag ban resource pages.

In developing the materials for this public hearing, staff made a version error and posted a revised version of the ordinance rather than Councilor Zelenka's original proposed ordinance. The error has been corrected; with Councilor Zelenka's original proposed ordinance, titled "Alternative Version", posted on the city's website and provided below as Attachment A. The Discussion section of this AIS identifies the differences.

RELATED CITY POLICIES

The City of Eugene regulates licensed garbage and recycling hauling activities within the city limits. These activities are guided by Oregon Revised Statutes as well as the Eugene City Code. In particular, ORS 459a outlines the "Opportunity to Recycle" for all Oregonians and sets garbage diversion rates that county's and their municipalities should strive for. The Lane County goal is to achieve 54% diversion on an annual basis by 2009. This level was reached for the first time in 2010 (57.4%). Outside of this statewide policy, waste reduction and diversion is included as an action item within Eugene's Climate and Energy Action Plan.

DISCUSSION

Due to a staff error, an incorrect version of the ordinance was posted onto the City's website. Upon learning of the error, staff added the correct ordinance with a title of "Alternate Version" to the end of the incorrect version that is linked on the City's website.

The key differences between the posted ordinance and Councilor Zelenka's proposed ordinance ("Alternative Version") are:

1. Under Regulations section, the "Alternative Version" includes "city permitted events".
2. Under Exemptions, the "Alternative Version" includes: "Retail establishments may distribute product bags and may make reusable bags available to customers whether through sale or otherwise".
3. Under Exemptions, the "Alternative Version" includes an exemption from paying the pass through fee for paper bags by individuals receiving state assistance.
4. Under Exemptions, the "Alternative Version" includes an exemption from itemizing the pass through fee on receipts for vendors at farmers markets.
5. The "Alternative Version" does not include a section for providing the City Manager with authority to develop rules associated with the ordinance.
6. The "Alternative Version" does not include a section on community education and outreach.
7. The "Alternative Version" does not include a section directing where enforcement related penalties should be placed within City Funds.
8. The "Alternative Version" states a six month timeline for implementation whereas the posted version includes a 90 day implementation timeline.

Staff recommends adopting Councilor Zelenka's proposed ordinance (Alternative Version) with the following revisions.

1. Revise Definitions

The proposed ordinance requires reusable plastic bags to be a minimum of 2.25 mil in thickness. The term "mil" is the industry gauge for film plastic thickness. 2.25 mil bags are not what are typically considered "reusable", for they can easily tear as compared with their more durable canvas or thicker density plastic. The City of Austin's policy requires reusable plastic bags to be 4 mils, which allows for greater opportunities for reuse as compared with the 2.25 mil requirement.

Staff recommends revising Definitions to read:

Reusable bag. A bag made of cloth or other material with handles that is specifically designed and manufactured for long term multiple reuse and meets all of the following requirements:

- a. If cloth, is machine washable or
- b. If plastic, has a minimum plastic thickness of ~~2.25~~ 4.0 mils.

2. Exemptions

The proposed ordinance states that "vendors at farmers' markets are not subject to indicating on the customer's transaction receipt the total amount of the paper bag pass-through charge." While this rule specifies only farmers' markets, we believe that all retail 'fair' events (including the Holiday Market, County Fair, etc.) should be exempt from showing bag transaction costs on receipts.

Staff recommends revising section 6.865 to read:

(d) Vendors at ~~farmers markets~~ *retail fairs* are not subject to indicating on the customers transaction receipt the total amount of the paper bag pass through charge required in section 6.860(b) of this code.

If Council approves of this revision, staff recommends the following definition of Retail Fair to be included in the definition section.

Retail Fair. *An event which provides small independent vendors the opportunity for direct sales to the public. Examples include farmer's markets, county fairs, holiday fairs, etc.*

3. Addition of Rulemaking

To develop rules for implementing this ordinance, it must include language providing the City Manager or designee this authority.

Staff recommends the addition of the following language:

"The city manager shall adopt rules under section 2.019 of this code concerning the reduction of single-use plastic bags. The rules may address but are not limited to the establishment of procedures, policies and operating practices which are required for implementation of this section."

4. Addition of Penalty Clarification

The proposed ordinance does not specify where the collected penalties will be distributed. Staff recommends that all administrative civil penalties collected pursuant to the enforcement of this ordinance be deposited into the city's solid waste license fund to cover the cost of enforcement efforts and assist with waste prevention awareness programs.

5. Addition of Business Hardship Exemption

The proposed ordinance has a placeholder for business hardship exemptions. Staff researched a number of ordinances for background on this item. The City of Corvallis and City of Portland ordinances do not include language for business hardship exemptions. The City of Austin, the City of Bellingham, the City of San Francisco, and Santa Cruz County all have language for business hardship exemptions. We reviewed the existing language in these various codes and drafted language below.

Staff recommends the following for business hardship exemption:

"The City Manager or the designee may exempt a retail establishment from the requirement set forth in Section 6.855-6.860 of this chapter for a one-year period upon the retail establishment showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the City Manager's or designee's decision shall be final."

If Council approves of this revision, staff recommends the following definition of undue hardship to be included in the definition section.

Undue hardship. *Circumstances or situations unique to the particular Retail Establishment such that there are no reasonable alternatives to Single-Use Plastic Carryout Bags or a Paper Bag Pass-Through cannot be collected.*

PUBLIC COMMENT RECEIVED TO DATE

Attachment B is a compilation of public testimony that has been collected via email and US postal service mail from comment period 7/24/2012 to 9/10/2012. There are 10 emails total and zero letters. The comment period spans the day after the 7/23/2012 City Council work session until 9/10/2012, the day the Agenda Item Summary is due for the 9/17/2012 public hearing on the proposed bag ban ordinance. Testimony will be received through 9/17/2012, the date of the public hearing. Staff will incorporate all public comments received after September 10th with comments at the public hearing and

make available to Council.

TRIPLE BOTTOM LINE – SOCIAL, ENVIRONMENTAL, ECONOMIC IMPACTS

The staff analysis from the February 27, 2012 work session includes a detailed discussion on the triple bottom line elements involved in a plastic bag ban. If the adopted ordinance includes a five-cent fee for single use paper bags, then the city needs to develop an outreach and assistance program for disproportionately impacted populations to provide low or no cost reusable bags.

NEXT STEPS

None at this time.

COUNCIL OPTIONS

1. Adopt Councilor Zelenka's proposed ordinance as submitted.
2. Direct City Staff to revise Councilor Zelenka's proposed ordinance based on Council approved recommendations from this AIS and public comment.
3. Take no action.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends Option 2, directing city staff to revise Councilor Zelenka's proposed ordinance to include any Council approved recommendations.

SUGGESTED MOTION

None required at this time.

ATTACHMENTS

- A. Councilor Zelenka's proposed ordinance entitled "Alternative Version"
- B. Public Comment collected to date.

FOR MORE INFORMATION

Staff Contact: Ethan Nelson
Telephone: (541) 682-5224
Staff E-Mail: ethan.a.nelson@ci.eugene.or.us